

EVOLUTION OF FEDERALISM IN PAKISTAN: A CONSTITUTIONAL STUDY

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ABSTRACT

The primary goal of this study is to critically evaluate the origin and growth of federalism in Pakistan since its inception in 1947. This historical analysis scrutinizes constitutional development in relation to the federal provisions of various constitutional proposals and amendments adopted by the Pakistani parliament. Historically, the federation has been centralist in its approach. Unlike its counterparts, it established a unicameral legislature under its constitutions of 1956 and 1962. However, Pakistan's 1973 constitution not only granted provinces considerable provincial autonomy but also established a bicameral legislature and granted parity representation to units in the federal chamber. This paper claims that the federation underwent a major transition in 2010 when the parliament passed the 18th constitutional amendment that reformed the federal structure substantially. It is argued that since the enactment of this amendment, self-rule and shared rule, which is the essence of federalism, is strengthened in Pakistan. In this context, this study examines how this amendment has led to legislative, administrative, and fiscal decentralization and enhanced the role of the Senate and Council of Common Interests in Pakistan.

Keywords: Federalism; Pakistan; British India; Self-rule; Shared rule; 18th constitutional amendment

INTRODUCTION

Although the Pakistani federation's experience is distinctive in some significant ways, it is generally overlooked in comparative federalism literature. It has only recently gained some scholarly attention (Adeney & Boni, 2022; Breen, 2022; Mushtaq, 2022; Bhattacharyya, 2020; Faiz, 2015; Siddiqi, 2016; Singh & Kukreja, 2014; Rabbani, 2011; Adeney, 2007; Ahmed, 1990). This paper, in contrast to earlier studies, primarily explores how federalism in Pakistan developed from its inception to its culmination in the form of the 18th amendment in 2010.

The India Independence Act of 1947 not only ended British rule in India but also partitioned the country into two states: India and Pakistan. While the Indian constitution was enacted in 1949, it took Pakistan nine years to adopt its constitution. The controversy surrounding the makeup of the federal political institutions was largely responsible for this delay. To overcome the differences over the federal design, the state had to adopt a one-unit scheme, establish a unicameral legislature, and provide parity representation to both provinces irrespective of their population size. Despite all these extraordinary arrangements, the federation collapsed in 1971, becoming the first post-colonial federation to disintegrate. However, the federal system was reformed in Pakistan's 1973 constitution, and since 2010, the country has seen a shift toward politics of accommodation and inclusive federalism. The 18th constitutional amendment in Pakistan has essentially strengthened self-rule and shared rule. In this study, the evolution of federalism in Pakistan is examined from a historical and constitutional perspective.

The paper consists of six sections. The creation of non-majoritarian institutions by the British government in India, which laid the groundwork for the emergence of federalism, is described in the next section. The paper then examines the debates and disagreements over the features of federalism among the representatives of different regions in Pakistan that delayed the process of drafting the

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constitution in the early years of Pakistan. subsequently, the three phases of federalism's historical development are analyzed in separate sections: quasi-federalism under the 1956 and 1962 constitutions, federalism under the 1973 constitution, and the shift to inclusive federalism following the 18th constitutional amendment. The final section concludes the study.

Origin of Federalism in British India

The British government set up federal institutions in India, as it did in her other colonies such as Canada, Australia, and Malaysia. The Morley-Minto Reforms of 1909 laid the foundations for these institutions in India and provided political representation to religious minorities in the central and provincial legislatures through a system of separate electorates or nominations (Thorat, 2019). The non-majoritarian approach of this Act seems quite plausible and appropriate for the political accommodation of various segments of the society, given the complex multiethnic and multi-religious nature of Indian society. Subsequently, the Congress and League endorsed this approach by signing the Lucknow Pact in 1916, which proposed the over-representation of Indian Muslims in the Central Legislative Assembly (one-third against their nearly one-fourth population size) and a separate electoral system and constitutional safeguards for legislation, related to their religion or culture (Owen 1972). These provisions recognized Muslims as a separate group/nation and provided them with non-territorial autonomy and power-sharing. Then, the Government of India Act 1919 moved a step further. It not only adopted several proposals of the Lucknow Pact but also provided limited autonomy to the provinces. This Act established a system of limited responsible government known as the “dyarchy system”. It is argued that this dyarchy system served as the basis for the creation of federal institutions in India by granting the provinces a certain amount of autonomy, transferring some subjects to Indian ministers who were accountable to the provincial legislatures, and leaving other subjects up to the provincial governor's discretion (Rudolph & Hoeber, 2010: 561).

The British government sent Sir John Simon-led Statutory Commission to India in 1927 to assess the political situation and make constitutional reform recommendations that would further transfer authority to the people (Bowser, 2021: 133). When the Commission arrived in India in early 1928, it was met with protests and boycotts by Indians, and it failed to meet their demands. However, it sparked debates about the future constitution of British India. In the late 1920s and early 1930s, British India witnessed constitutional battles between Congress and the League. The All Parties Conference in Calcutta in 1928, attended by 29 political parties, failed to reach an agreement. The committee formed by the Conference and chaired by Motilal Nehru submitted its report, known as the Nehru Report. The report did not accommodate the demands of the League and Jinnah's proposals. Jinnah completely rejected the report for undermining the need for a separate electorate for any community and presented his Fourteen Points against it.

Katharine Adeney has analyzed the federal plans of Congress and the League in great detail. She has noted that the notion of provincial autonomy was an integral part of all constitutional proposals between 1916 and 1946 in British India. The main point of contention was the scope of provincial autonomy. While the League sought greater autonomy and over-representation in the central legislative assembly, Congress proposed a centralized federation with residual powers at the center (Adeney, 2007: 34-37). On the contrary, the Muslim League advocated for a more consensual and non-majoritarian system. It argued for a separate electoral system to ensure Muslim representation in legislative assemblies, as well as representation in the cabinet. It worked to secure constitutional safeguards to preserve Muslim culture and identity. These efforts were made to protect Muslims in Muslim minority provinces through non-territorial autonomy measures. The League sought maximum territorial autonomy for provinces with a Muslim majority (Adeney, 2007: 37-41).

The Indian leadership met in London in 1930, 1931, and 1932 at the Round Table Conferences to discuss the future constitution for British India. Despite disagreements over constitutional design, the eventual result of these conferences was the enactment of the Government of India Act of 1935 by the British parliament (Legg, 2020: P.21). The India Act 1935, which allowed for the creation of an All-India Federation, provided for the shared authority between the federation and the provinces. However, in practice, the federal powers were so wide-ranging that the provinces were left with very few powers. The Act also established a bicameral legislature comprising the Federal Assembly and the Council of States. Communal representation in elections as a principle was also upheld (Waghmare, 2018). Under this Act, the provincial elections were held in 1937 and Congress organized ministries in various provinces after winning the elections. Meanwhile, the demand for a separate Muslim homeland surfaced

and Indian Muslims overwhelmingly voted for the League in the elections of 1945-46. The Muslims demanded the creation of a sovereign state comprised of parts of India with a Muslim majority in the northwest and northeast. As a result of the culmination of this movement, the British government divided India.

Controversies over federal design in the nascent state

Following the establishment of Pakistan on August 14, 1947, a constituent assembly was formed, comprised of the winners of the British India elections (1945-46) from the regions that were now part of Pakistan. The members elected from the Indian territories that migrated to Pakistan were also granted membership. The membership of this assembly was 69 which rose to 79 after the addition of representatives from the princely states that signed the accession papers and joined Pakistan.

A constitution for Pakistan was to be passed by this constituent assembly. The Objective Resolution passed on March 12, 1949, set forth the guiding principles on which the constitution would be adopted. The Resolution explicitly stated that the new constitution would be based on federal principles (Sial, 2008: 170).

Subsequently, the members of the constituent assembly formed the Basic Principles Committee (BPC). The BPC was tasked with formulating the fundamental principles that would be the basis of the proposed Pakistan Constitution. The Committee submitted its interim report on October 7, 1950, after taking into consideration views and proposals from around the country. This report received much criticism as well as a diverse variety of viewpoints. The major criticism came from the Bengali representatives in the assembly on the federal characteristics recommended by the state. The fact that the BPC did not adopt Bengali as a lingua franca and did not provide the provinces with substantial autonomy was a major source of anxiety for the people of East Pakistan. The government also did not ensure that East Pakistan had an overall majority in the legislature based on population. Instead, in a bicameral parliament, both Houses were given equal powers (Kokab, 2011).

This report was withdrawn and the BPC was assigned the task to prepare a revised report that would be acceptable to all stakeholders. The BPC submitted a second report in 1952 during Khawaja Nazimuddin period. This report did not receive any better reaction from East Pakistan than the previous interim report. This time the stronger objection came from the Punjabi politicians who felt that the division of the country into units would enable East Pakistan, which was one unit, to easily dominate West Pakistan, which was divided into nine units. On the other, the Bengalis also expressed their dissatisfaction because they felt that this report was not much different from the previous one regarding provincial autonomy. They demanded the maximum amount of provincial authority possible for East Pakistan.

Muhammad Ali Bogra became the Prime Minister as he replaced Khawaja Nazimuddin in April 1953. Bogra stated that one of his key aims would be to resolve the constitutional impasse in the country. His solution known as the 'Mohammed Ali formula', provided for a bicameral parliament: The proposed upper house was comprised of 50 members and provided parity representation to the five units of the country (i.e. East Bengal, Punjab, Sindh, NWFP (now Khyber Pakhtunkhwa), and Balochistan). Because West Pakistan was comprised of various provinces and princely states, it was accorded a majority in the House of the Units of Pakistan. These members would be elected indirectly by the legislature of the lower house. The lower house was to comprise 300 directly elected members, with 165 coming from East Pakistan because the majority population of the country was in that province. The seats in the joint session of the houses were distributed in such a way that there was no imbalance between the two zones in the joint sitting of the parliament. Another important feature of this constitutional proposal was that both chambers were given equal authority, and if there was a disagreement, a joint session was called to resolve it. The proposal added an extra safety valve that stated that no bill could be passed in a joint session unless the majority supporting it included at least 30 percent of the total number of members from each zone (Choudhury, 1955). This formula also dealt with the issue of language controversy and adopted both Urdu and Bengali as the official languages of the country. It further stipulated that the state shall take all efforts required to promote the development and expansion of a single national language among its citizens (Choudhury, 1955). This plan was agreeable to most provincial factions, but the assembly was dissolved before it could enact the constitution, charging that it had lost the confidence of the people, while the true reason was that it attempted to limit the Governor General's power. Following that, on May 28th, 1955, under the Governor General Order, the second Constituent Assembly was organized. Members of this assembly

were elected indirectly by provincial assemblies in their respective provinces. This assembly was comprised of 80 members and provided equal representation to East and West Pakistan.

According to A.Q. Sial (2008: 176), the most unpopular event in Pakistan's history occurred in 1955, when all federating units of West Pakistan and some princely states that had previously acceded to Pakistan were merged under the one-unit scheme. He asserts that the plan, which was invented to deny them the right to share power in the federation under the new constitution, was opposed by the states and provinces.

Quasi-Federalism under the 1956 and 1962 Constitutions

G.W. Chaudhary (1956: 246-47) wrote that on the face of it the 1956 Constitution featured all the traditional characteristics of a federation that included a written constitution, a division of powers between the central and provincial governments, a dual polity, and a supreme court. The division of powers was enumerated in three legislative lists. The federal government was given jurisdiction over defense, foreign affairs, currency and banking, foreign trade, and many other subjects in this constitution (the federal list included 30 items). The provincial list was the longest, with 94 items. In addition, the provinces were given residuary powers. It is noteworthy that this constitution established a unicameral legislature, the National Assembly of Pakistan, contrary to federal traditions. The National Assembly had 300 members, equally distributed between the provinces of East Pakistan and West Pakistan. Urdu and Bengali were both designated as national languages (Choudhury, 1956: 246-47). Unfortunately, Pakistan's early years were not characterized by political stability. Under the 1956 Constitution, four coalition cabinets were established between 1956 and 1958 but all failed to implement true federalism and democracy in Pakistan (Kiran, 2014). Martial law was imposed in October 1958, and Ayub Khan assumed power.

Ayub Khan established a Constitution Commission in February 1960 under the chairmanship of Justice Shahabuddin to propose a draft constitution. The Commission submitted its recommendations, which were largely disregarded when the 1962 constitution — which is credited to President Ayub Khan — was adopted. This constitution differed from Pakistan's constitution of 1956 in a few ways, including the adoption of a presidential system of government rather than a parliamentary one, the use of indirect elections rather than direct ones, and the provision of only one legislative list (federal legislative list) rather than three lists outlining the division of powers between the federation and provinces. However, the One-Unit scheme, the unicameral legislature, the equal representation of East and West Pakistan in the National Assembly, the centralized federal structure, and the status of Bengali and Urdu as official languages were all retained.

It is argued that during the Ayub period, Pakistan's federation was virtually transformed into a unitary state because, under the presidential system, both provinces were ruled by appointed governors who were not accountable to the electorates of the respective provinces but the man who appointed them, the President of Pakistan. The centralization of political power and controlled democracy entrenched in the Ayub regime's control system resulted in a sense of marginalization and deprivation among not the minority groups of West Pakistan and the Bengalis, the majority group (Mushtaq, 2009). Despite its robust economy and extensive development, the regime was overthrown. It collapsed, but by then the national integration had already suffered some irreversible damage. The Bengalis pursued some extreme autonomy demands that were difficult to meet. Finally, the constitutional crises that followed the 1970s elections resulted in Bengal's separation. The Indian intervention in Bengal also enabled the mobilization of the masses there and provided military support to them during the civil war. The Pakistani federation became the first post-colonial state to experience a successful secessionist movement. Analyzing this failure of the state, Farhan Hanif Siddiqui (2016) contends that for federalism to be successful, a nation's ruling elites must recognize and support its fundamental principles. If there is no such acceptance, federalism is merely a myth.

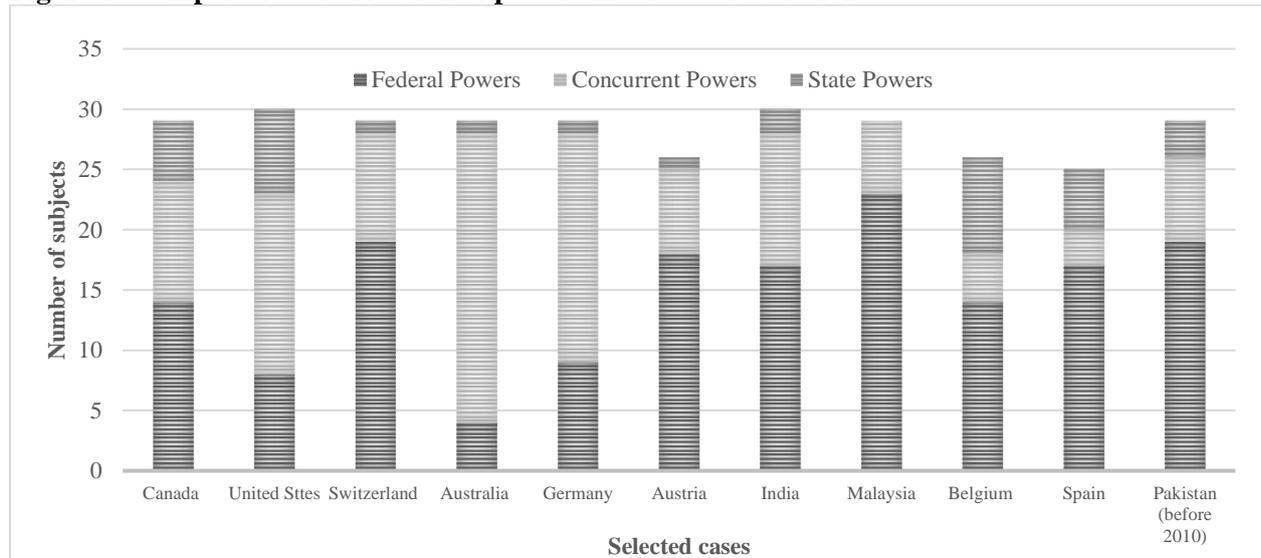
Federalism under the 1973 Constitution

Following the separation of Bengal in December 1971, the military regime handed over power to Bhutto whose Pakistan People's Party (PPP) had a majority in the National Assembly. He became the civilian martial law administrator, an unprecedented political position. Subsequently, under the Interim Constitution of 1972, Bhutto took over as President of Pakistan. The opposition parties, particularly the Jamiat Ulama-e-Islam (JUI), and the National Awami Party (NAP), demanded that martial law should be lifted and power be transferred to the elected governments at the federal and provincial levels. In early March 1972, Bhutto met with the opposition parties, and this meeting resulted in an agreement

between the NAP, JUI, and PPP. This agreement resulted in the formation of NAP-JUI coalition governments in KP and Balochistan. The PPP had a majority in Sindh and Punjab, where she formed her cabinet. This agreement, however, was short-lived. The federal government dismissed NAP's government in Balochistan on February 12, 1973, claiming that it was working against the state's integrity. In response to this dismissal, KP's NAP-JUI coalition government resigned. Despite the hostility between the opposition and the government, the National Assembly of Pakistan unanimously passed the 1973 constitution on April 10, 1973, and it came into effect on August 14, 1973 (Mushtaq et al., 2011).

The 1973 Constitution divided powers between the federation and provinces by adopting two legislative lists of subjects: (a) the federal legislative list, which encompasses subjects on which the federal parliament has the authority to legislate; and (b) the concurrent legislative list, which includes subjects on which both the central and provincial legislatures have the authority to legislate; however, the supremacy of central legislation was maintained in case of conflict. The provinces were given residuary powers. However, it is claimed that legislative lists were so comprehensive that they left provinces with little authority in the form of residuary powers (Nazir, 2008). Contrary to this argument, it is claimed that the division of legislative powers between the center and provinces in Pakistan's 1973 constitution marked an important symbolic step toward 'maximum autonomy' (Baxter, 1974). This claim is meaningful because the provinces were given more powers under this constitution than under Pakistan's 1962 and 1956 constitutions. However, as illustrated in Figure 1, the Pakistani federation provided the federal government with more powers than most contemporary federations. Only the Malaysian federation appears more centralized than Pakistan.

Figure 1: Comparative distribution of powers in selected federations



Source: Calculated by authors using data from Watts, R. (1999) and the Constitution of Pakistan-1973 (before the 18th amendment). Note: The distribution of powers is classified into three broad categories only, federal, concurrent, and state powers.

As previously stated, the Pakistani federation established a unicameral legislature in both the 1956 and 1962 constitutions. However, Pakistan's 1973 constitution established a bicameral parliament, comprising the National Assembly and Senate of Pakistan. In the lower house, the National Assembly of Pakistan, representation to the provinces and regions was provided on a population basis. However, in the Senate, all provinces were provided parity representation irrespective of their population size. This house also included members from Islamabad (the federal capital) and FATA (federally administered tribal areas). The National Assembly was bestowed many powers regarding the election and removal of the chief executive, and fiscal matters owing to the parliamentary nature of government. As a result, Pakistan's Senate played a subservient role to the National Assembly (Mushtaq & Khan, 2018; Baxter, 1974).

To strengthen shared rule, Pakistan's 1973 constitution established the Senate with specific powers, and apart from this, it constituted the Council of Common Interests (CCI), the National Finance Commission (NFC), and the National Economic Council (NEC). CCI was established by the

constitution to serve as a forum for resolving conflicts and disagreements between the federation and provinces, as well as among provinces. The CCI was given authority over the federal legislative list's subjects (Part II). The council was given authority to control and supervise the matters on this list. The Council consisted of the prime minister, the four provincial chief ministers, and three federal ministers nominated by the prime minister. The council was accountable to the parliament and it had to submit an annual report to both houses (Naseem et al., 2022). Pakistan's 1973 constitution established a National Finance Commission to distribute funds between the federation and provinces, as well as between provinces. Article 160 of the Constitution stipulates that the president will constitute a 'National Finance Commission' comprising the federal minister of finance and the ministers of finance of the four provincial governments as well as any other persons the president may appoint after consulting the governors of the provinces' (Arshad et al., 2019). According to the constitution, the President of Pakistan appoints members of the National Economic Council, which includes the Prime Minister and four other individuals nominated by him, Chief Ministers of all provinces, and one representative from each province nominated by the respective chief minister. The National Economic Council is in charge of developing financial, commercial, social, and economic policies (Mukhtar, 2016).

This analysis suggests that in comparison to previous constitutions this constitution not only strengthened self-rule by granting more autonomy to provinces, but it also deepened shared rule by establishing the Senate, the Council of Common Interests, and the bodies that regulate fiscal matters in consultation with provincial representatives. Though, the 1973 constitution met the major requirements of federalism by granting provincial autonomy, founding the Senate, and establishing institutions of shared rule. Yet, in practice, the state has seen significant centralization of power and federal intervention in provincial matters in both civilian and military regimes in Pakistan (Mushtaq, 2016). As a result of this political centralization, smaller units felt marginalized and alienated and they began to demand provincial autonomy by abolishing the concurrent legislative list and giving the Senate more powers, which grants them over-representation (Mushtaq, 2011: 83-4). In the post-Zia era, the ethno-regional parties more vehemently promoted the demands for provincial autonomy that first surfaced during the Movement for Restoration of Democracy (MRD) against the Zia-ul-Haq regime (1977–88). As a result, mainstream parties such as the Pakistan Muslim League (N) and the PPP were forced to comply with these demands when signing the Charter of Democracy in London in 2006, while their leadership was in exile during the Musharraf regime (1999-2008). This charter resulted in the enactment of the eighteenth constitutional amendment which brought a significant shift in the federal politics of Pakistan.

The Eighteenth constitutional amendment and politics of federalism

The President of Pakistan, Asif Ali Zardari appointed a Special Parliamentary Commission on Constitutional Reforms (SPCCR), comprising 27 members representing all the parliamentary parties to draft a constitutional amendment proposal to strengthen democracy and federalism in Pakistan. SPCCR made the recommendations and wrote the text of the 18th Constitutional Amendment. The commission's recommendations were almost unanimous and they made amendments to 97 articles. This amendment has granted more provincial autonomy to the constituent units, has enriched the role of the Senate, enhanced and guaranteed fiscal resources for the provinces, and has strengthened the role of the Council of Common Interests.

The 18th constitutional amendment, which was adopted in April 2010, is considered the most significant amendment in the constitution of Pakistan because it has far-reaching consequences for democratic consolidation and federal stability in Pakistan. Katharine Adeney (2012) has regarded it as a step towards inclusive federalism as it has significantly contributed to center-province relations in Pakistan and relations between provinces. Since it is beyond the purview of this paper to analyze every significant provision of the 18th constitutional amendment, the authors have only paid attention to those that pertain to federalism.

a) Provincial autonomy and the 18th amendment

In the context of center-province relations, this amendment brought significant changes. The most important provision was the abolition of the concurrent legislative list that was comprised of forty-seven subjects. These subjects were mainly transferred to the provinces except for three subjects that were put on the federal legislative list. The transferred subjects are presented in the following table.

Table No. 1 Ministries Abolished after the 18th amendment

Sr. No.	Ministries	Sr. No.	Ministries
1	Food and Agriculture	10	Livestock and Dairy
2	Health	11	Labor and Manpower
3	Education	12	Minorities
4	Social Welfare and Special Education	13	Tourism
5	Population Welfare	14	Women development
6	Youth Affairs	15	Special initiatives
7	Environment	16	Local government & Rural Development
8	Sports	17	Zakat and Usher
9	Culture		

Source: Shah, A. 2012: 397

In addition to transferring the subjects to provinces, several articles of the constitution that deal with center-province relations have also been rewritten. For instance, in its original form, Article 144 of the constitution gave the federal parliament the authority to pass laws with the consent of one or more provinces on any issue that is not mentioned in the federal legislative list. Now, this amendment has authorized the provincial assembly to change or repeal such legislation of the federal parliament. Similarly, Article 147 had given the provinces the authority to delegate to the federation duties related to areas under the ambit of the provinces' executive authority. The requirement that the provincial government obtains the approval of the provincial assembly for the tasks assigned within 60 days has now been added (Ahmed, 2013). In the context of Pakistan, this decentralization of power and authority to the provinces is unprecedented. Historically, the federation has not dealt with autonomy demands and espoused highly centralized federal designs. The colonial legacy played a part in this approach as Pakistan inherited the Government of India Act 1935 as an interim constitution and this document provided the foundations for the enactment of various constitutions in Pakistan. However, the 18th amendment might be considered a departure from this tradition.

The smaller, more resource-rich provinces of Pakistan have been constantly advocating for ownership rights to their resources. Therefore, joint-ownership rights over natural resources have also been granted to provinces under the 18th constitutional amendment. These constitutional provisions have significantly empowered the smaller provinces about natural resources. It is worth mentioning that the implementation of decentralization contemplated by the Eighteenth Amendment faces various challenges (Naseem & Mahmood 2019). However, these issues are not discussed because they fall outside the scope of this study.

b) Senate of Pakistan and the 18th amendment

The Senate of Pakistan is significant for smaller provinces and ethno-regional parties' in many ways. It not only provides parity representation to the smaller provinces but also enables the smaller ethno-regional parties to get sizeable membership in the upper house. The following table illustrates that the ethno-regional parties that are outnumbered by the state-wide parties in the National Assembly retained meaningful representation in the Senate. This relative representation in the Senate suggests the significance of this house for regional identity groups.

The Senate's role has been significantly strengthened as a result of the 18th constitutional amendment. Regarding the Senate's legislative role, any bill about the subjects mentioned in Part-A or Part B of the federal legislative list may originate in the Senate. Except for money bills, the Senate has the same authority as the National Assembly over ordinary legislation and constitutional amendments. As a result of this amendment, the Senate's working days have been increased from 90 to 110.

The money bill originates in the lower house, which has sole authority to pass the budget and it has become a constitutional obligation in modern democracies that such bills must be passed. As a result of its status as an indirectly elected body, the Pakistan Senate has only limited budgetary authority. Article 73 of the 1973 constitution states that any money bill, including an annual budget statement, must originate in the National Assembly. The Senate, on the other hand, would receive a copy to make suggestions that would not be binding on the National Assembly. The Senate was previously required to submit its report within a week, but that deadline has now been extended to 14 days.

Table No. 2 Distribution of seats (%) in National Assembly and Senate (2009-21)

Parliamentary Years	2008	2013	2018*	2009	2012	2018	2021
	NA	NA	NA	Senate	Senate	Senate	Senate
<i>All-Pakistan parties</i>							
PPP	36.8	13.27	15.8	27	39.4	19.3	20.2
PML-N	27.0	55.75	24.9	7	13.5	31.7	21.2
PML	14.7	0.60	1.5	21	4.8	0	1.1
PTI	**	9.73	45.6	0	0	11.5	24.2
Sub Total	78.5	79.35	87.8	55	57.7	62.5	66.7
Ethno regional parties	13.2	13.28	6.3	18	24.1	17.3	17.2
Islamist Parties	2.4	5.01	4.7	13	6.7	5.8	3.0
Independents	5.9	2.36	1.2	14	11.5	14.4	13.1
Sub Total	21.5	20.65	12.2	45	42.3	37.5	33.3
Grand Total	100	100	100	100	100	100	100

Note: Authors' calculations. Ethno-regional parties represent specific ethnic groups or have popular support limited to particular regions. * Seats after the general elections held in July 2018. **Boycotted the elections.

Previously, if the National Assembly was not in session, the president could issue an ordinance; now, it is also necessary for the Senate to not be in session. Although under the parliamentary system, only the National Assembly has the authority to elect the prime minister or pass a vote of no-confidence against him; however, the 18th Amendment has strengthened the Senate's role in executive accountability. The cabinet is now collectively accountable to both the Senate and the National Assembly. The Senate has been assigned a role in the appointment of judges of the superior courts. The parliamentary committee that recommends judges and the chief election commissioner now has equal representation from the Senate and the National Assembly. Several reports that were previously only presented to the National Assembly, such as reports on policy principles and any report from the Council of Common Interests, are now also presented to the Senate. Similarly, the National Finance Commission is now accountable to both houses. The Senate is now represented by the Public Accounts Committee also (Mushtaq, 2017). However, systems established on the separation of powers doctrine give the second chamber a stronger role than systems founded on parliamentary systems. In parliamentary systems, the lower houses are dominant, and party discipline limits the second chamber's ability to play a substantial territorial role.

c) Fiscal federalism and the 18th amendment

Historically, the NFC awards have given the federation a large portion of the funds from the divisible pool. For example, during the Musharraf period in 2006, the NFC allocated 55% of funds to the center and 45% to provinces. Furthermore, the provincial pool funds were distributed based on population, thus Punjab received the lion's share. Under these circumstances, the smaller provinces had argued for not only increasing the provinces' share of the divisible pool but also for distributing funds based on multiple criteria (Ahmad et al., 2007).

The following table summarizes the allocation of funds to provinces in various national finance commissions.

Table No. 3 Allocation shares to provinces under NFC Awards/ Presidential Orders (%)

Province	Presidential Order-2006	Presidential Order-2010	Difference between 2006 and 2010	Size of population-to-share in funds ratio (2010)
Punjab	57.36	51.74	-5.62	1: 0.90
Sindh	23.71	24.55	0.84	1: 1.04
KP	13.82	14.62	0.8	1: 1.06
Balochistan	5.11	9.09	3.98	1: 1.78
Total	100	100	0	

Source: Data retrieved from: <https://finance.gos.pk/ResourceDistribution/NFC>; and calculations borrowed from Mushtaq & Zahra, 2022.

Democratic rule in Pakistan was restored after the general elections in 2008 and the federation and provinces agreed to revise the criteria for distributing funds between the federation and provinces, as well as among the provinces. Therefore, the 7th NFC Award was passed in 2009 with the consensus that not only increased provinces' share of the divisible pool but also adopted multiple criteria to distribute funds among provinces. This award was considered a landmark of its time. It is reported to have appeased the provinces of Balochistan and Khyber-Pakhtunkhwa by including the factors of poverty and inverse population density in the formula to allocate funds and Sindh Province was compensated by including a tax effort indicator in this distribution. As a result, the smaller, poorer provinces received more funds than in previous allocations (Shah, 2012).

Table No. 4 : Resource distribution formula-2009 (factors and their assigned ratio)

S. No	Factors	Assigned ratio
1	Population	82.00%
2	Poverty or Backwardness	10.30%
3	Revenue Generation or Collection	5.00%
4	Inverse Population Density	2.70%
Total		100.00

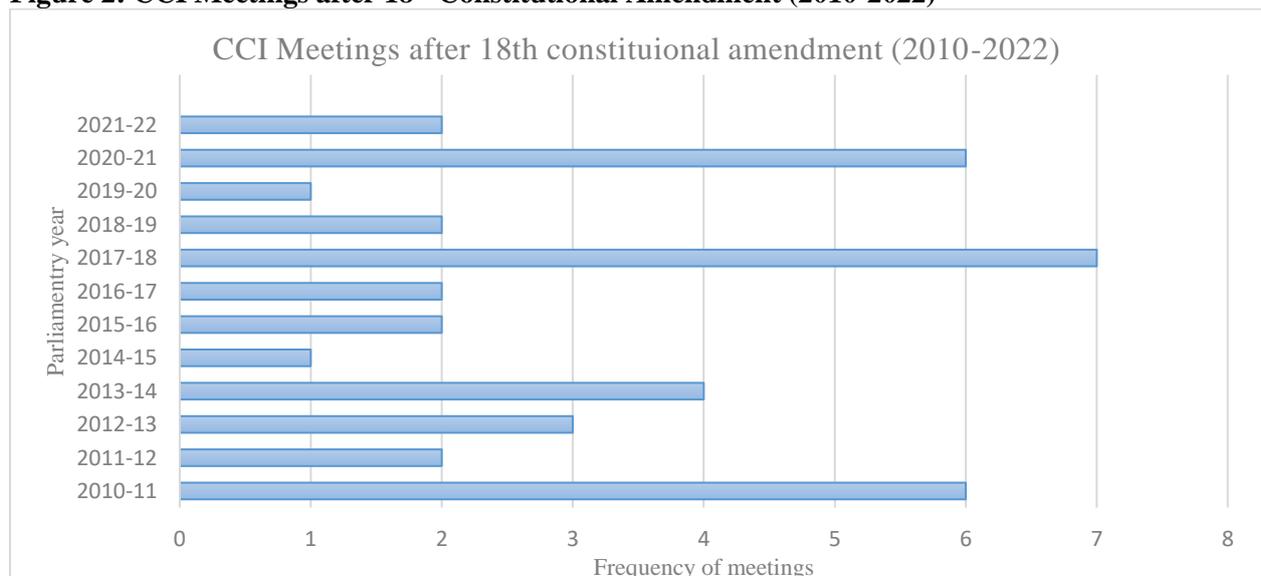
Source: <https://finance.gos.pk/Home/Download?path=Resources%5CNFC%5CPresidentialOrders%5C2010.pdf>

Since 2011, 57.5 % of the divisible pool funds have been allocated to the provinces and 42.5 % to the center under this award. This was a significant step forward in Pakistan's fiscal decentralization. The 18th Constitutional Amendment safeguarded this fiscal allocation to the provinces as a share of any province shall not be less than its share in the previous award (Constitution of Pakistan).

d) Council of Common Interests and 18th amendment

Despite being established under the 1973 constitution, the Council of Common Interests (CCI) was mainly inactive and contributed little to its stated function as a power-sharing mechanism. It could only meet 11 times since its inception in 1973, three times during Zulfiqar Ali Bhutto's period (1973-77), three times during Nawaz Sharif's first tenure (1990-93), and three times during his second period (1997-99), once during Moin Qureshi's (July-October, 1993) caretaker government, and once during Musharaff's period (1999-2008). However, after the 18th Amendment, the CCI has convened 38 meetings, the most recent in January 2022, and addressed dozens of federal-provincial issues. The 18th Amendment has mandated that the CCI hold quarterly meetings, establish a permanent secretariat, and provide its report to both houses of parliament, the National Assembly, and the Senate on a regular basis.

Figure 2: CCI Meetings after 18th Constitutional Amendment (2010-2022)



Source:

<https://cci.gov.pk/SiteImage/Misc/files/Annual%20Reports/Annual%20Report%20of%20CCI%202020-21-final%20printed%20version.pdf>

CONCLUSION

This paper has analyzed the historical development of federalism in Pakistan. This evolution of federal political institutions can be divided into three phases. In the first phase, Pakistan faced several challenges to design federalism owing to the difference of opinion among the various political parties and groups over the nature of the federal features. Finally, the political leadership reached a consensus and adopted a zonal federation with a unicameral legislature, parity representation, and centralized federal design. Under this arrangement, the 1956 and 1962 constitutions espoused a federal system. However, this arrangement collapsed and resulted in the separation of Bengal. The second phase of federal development begins with the enactment of the 1973 constitution. As the provincial status of Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan were already restored, this constitution granted more provincial autonomy as compared to previous constitutions. However, still the federation managed to retain several powers in the federal legislative list and the upper hand in connection to the subjects enumerated in the concurrent legislative list. More importantly, the federation was provided more financial resources than the provinces in various financial awards issued by the National Finance Commission. In addition, a larger share of funds from the total financial pool was always granted to Punjab owing to its larger population size. Although in the bicameral parliament the Senate gave parity representation to all the provinces, this did benefit power-sharing much. In the 1973 Constitution of Pakistan, the Senate was relegated to a secondary role in all respects. It had, limited legislative powers related to the federal legislative list and money bills. The National Assembly of Pakistan had sole authority to elect or dislodge the executive. The federal cabinet was not much accountable to this house. Furthermore, the intervention of federal regimes continued to dislodge the unwanted provincial governments. The two military regimes of Zia-ul-Haq (1977-1988) and Pervez Musharraf (1999-2008) proved counter-productive to the development of federal culture and the smooth functioning of the federal institutions.

With the return of democratic rule in 2008, the third phase of federalism started in Pakistan. The Charter of Democracy and the resultant politics of reconciliation paved the way to redesign the federal structure and accommodate the genuine federal demands of minority provinces and regional identities. The 18th Constitutional Amendment which was passed in 2010 with almost complete consensus was considered a major step toward the politics of accommodation in Pakistan. This amendment not only devolved several powers to the provinces but also enhanced the share of provinces in the divisible pool. The smaller provinces, especially Balochistan — the most unprivileged province of Pakistan — received a great number of funds. The provinces were granted joint-ownership rights on their natural resources as well. The role of the Senate was enhanced and except for money bills and the election of the prime minister, it provided equal powers to the National Assembly. The federation recognized the ethnic claims of the Pashtuns and adopted the demand for renaming the NWFP as Khyber Pakhtunkhwa. Hence, it can be concluded that since the enactment of this amendment self-rule and shared rule, which is the essence of federalism, is strengthened in Pakistan.

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